

**ORIGINAL****CPI** Competition Policy Institute

Aug. 4, 1997

Ms. Regina Keeney  
Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M St. N.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

**EXPARTE: Application of Ameritech Michigan to provide  
InterLATA service in Michigan under Section 271.  
CC Docket No. 97-137**

Dear Ms. Keeney:

Last week, Ron Binz, Debra Berlyn and John Windhausen of the Competition Policy Institute (CPI) met with several staff from the Common Carrier Bureau to discuss CPI's comments in the above-captioned proceeding. We discussed CPI's suggestion that the FCC should consider whether consumers have a realistic choice for local telephone service as a principal part of its application of the public interest standard

In response to several questions raised in these meetings and further thinking on our part, we have prepared a revised summary of our views, which is attached to this letter. In particular, you may note our position that the availability of a resale competitor could satisfy the realistic choice approach. We also take the position that the realistic choice approach would not be appropriate for a Track B application; instead, we suggest that an RBOC making a Track B application should be required, as part of the public interest test, to comply with enhanced safeguards. (We will provide additional thinking about these safeguards when a Track B application is filed.)

Pursuant to section 1.1206(a)(2) of the Commission's rules, an original and one copy of this notice are being filed with the Office of the Secretary.

Sincerely,

*John Windhausen, Jr.*  
John Windhausen, Jr.  
General Counsel

cc: Richard Metzger; Kathy Levitz; Richard Welch; Daniel Shiman; Christopher Heimann; Carol Matthey; Michael Pryor; Florence Setzer.

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REVISED: August 1, 1997

**CPI's "REALISTIC CHOICE" APPROACH TO  
THE PUBLIC INTEREST STANDARD  
CONCERNING RBOC 271 APPLICATIONS**

1. The "public interest" test must mean more than the implementation of the "competitive checklist" and the requirements of Track A and Track B, or it will have no meaning at all.
2. While the Track A/Track B provisions and the "checklist" examine competition from the perspective of the carriers, the public interest test offers the Commission the opportunity to examine the question from the perspective of consumers.
3. While the FCC should examine ALL factors that affect whether approving a 271 application would benefit consumers, the FCC need not give them all equal weight. The Commission should give primary importance, or "substantial weight", to whether consumers in the state have a *realistic choice* of alternate local telephone providers.
4. The "realistic choice" approach allows the FCC to conduct a "reality check" of the local telephone marketplace to ensure that its decision on RBOC entry is not based entirely on legalities. The "realistic choice" approach allows the FCC to examine whether the market is truly functioning in a manner that allows consumers to choose an alternate local service provider.
5. The availability of a "realistic choice" for consumers of local telephone service is critically important to any long distance application for several reasons:
  - a) The availability of local competition is the only sure way to determine that all the barriers to local competition have been removed. The best proof that the market is open is if competitors are actually entering the market and consumers have a choice of alternate carriers.
  - b) Some degree of choice is a necessary safeguard to protect against discrimination against competitive long distance companies, cross-subsidization, and other anticompetitive harms. If long distance companies and consumers have an opportunity to choose an alternate local provider, the RBOC will have greatly reduced incentives to engage in anticompetitive conduct.
  - c) As the DOJ comments state, the benefits of local competition are far greater to consumers than the benefits of adding one more long distance competitor to a relatively competitive long distance market.

- d) The “realistic choice” approach is simpler to administer than the DOJ’s proposed “irreversibly opened to competition” standard. To determine whether a market is irreversibly opened to competition, the Commission would have to examine many additional factors that affect the growth of competition beyond the RBOC’s compliance with the checklist and determine their relative importance. Since the realistic choice approach is an “end results” test, it is much easier to evaluate.
6. If, rather than adopt CPI’s “realistic choice” standard, the FCC adopts the DOJ’s “irreversibly opened to competition” standard, the FCC must examine ALL factors that affect whether a market is open to competition. For instance, the FCC must take into account actions by the RBOCs to delay competition that are not included in the checklist (such as PIC-freezes, withholding billing information, intraLATA toll dialing parity, locking customers into long-term contracts, etc.) AND must take into account practices of other entities (such as excessive municipal regulation of new entrants and actions by landlords of MDUs) to determine whether a market is truly open. Several cities in Michigan, for instance, have taken action that discourages competition.
7. The *realistic choice* approach is NOT:
- a) a market share test. The realistic choice standard measures whether consumers can choose a competitor, not whether they actually have subscribed to a competitor. (The FCC can, however, examine market shares as evidence of whether competitors are available.)
  - b) adding to the competitive checklist. The FCC should not use the *realistic choice* standard as a precondition to interLATA entry in the same way that checklist items are preconditions. Whether consumers have a realistic choice is one factor, albeit the most important factor, of several that the FCC should consider as part of its public interest analysis.
8. As part of a *realistic choice* approach, the FCC should examine:
- a) whether urban, suburban and rural customers have a realistic choice;
  - b) whether large businesses and small businesses have a realistic choice;
  - c) whether residential customers in apartment buildings and residential customers in single-family homes have a realistic choice;
  - d) whether competitors are available in one location in the state or throughout the state.
  - e) whether high-income subscribers, middle-income subscribers and low-income subscribers have a realistic choice.

It is not necessary for the Commission to find that every one of these categories of

consumers have a competitor available to them. But the Commission should gather evidence of the availability of competition for each of these subgroups. The more categories of consumers that have a realistic choice available to them, the more likely the RBOC application would satisfy the public interest test.

9. Given that there are already well over 50 competitors for local telephone service, it is simply inconceivable that they would all collude to delay their entry into the local market simply to delay the RBOCs from receiving interLATA approval.
10. CPI believes that resale competition would satisfy CPI's "realistic choice" standard. In other words, as long as a significant number of consumers in different categories have a "realistic choice" of an alternate provider, the RBOC is likely to satisfy the public interest test whether the competitive service being offered to consumers is via the competitors' own facilities, unbundled elements, or resale.
11. Track B was intended to allow an RBOC to enter even if no facilities-based competitor comes to the market. The "realistic choice" approach is not appropriate in these circumstances. Yet, the public interest standard applies to Track B applications as well. CPI believes that, instead of the realistic choice approach, the public interest standard for Track B applications should include a showing that the RBOC will comply with enhanced safeguards to protect against discriminatory conduct.